IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1796 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BACHULAL RAMPRASAD GUPTA - Appellant(s)
Versus
ADMINISTRATOR, FOOD AND CIVIL SUPLY DEPARTMENT & 1 - Respondent(s)

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Appearance :
MR MITUL K SHELAT for Appellant(s) : 1,
MR AJ DESAI AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 31/01/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Admit. Mr AJ Desai, learned AGP waives

service of notice of admission of appeal on behalf of the respondents. In the facts and circumstances of the case, the appeal is taken up for final disposal today.

2. Mr Mitul Shelat, learned counsel for the appellant has submitted that the appellant's licence to carry on the business of dealing in kerosene has been cancelled by the authorities in violation of the principles of natural justice and that the appellant-petitioner's petition should not have been dismissed merely on the ground that the Government dismissed the appellant's revision on 30.12.2003, but the petition came to be filed in March 2005. It is submitted that the time taken by the petitioner to file the petition cannot be said to be unreasonable especially when the petitioner is an uneducated person and all the appellant is requesting is that his petition may be admitted and heard along with Special Civil Application No.9027 of 2004, which was filed on 29.6.2004 and admitted on 27.9.2004. It is also submitted that both the petitions raise identical contentions and that the time gap of nine months between filing of Special Civil Application No.9027 of 2004 and the petition giving rise to the present appeal cannot be considered as so gross that the petition should be dismissed only on the ground of delay.

Mr Shelat has further submitted that far from the so-called delay having created any equity in

favour of any third party, it is the appellant himself who is suffering for the delay because even if his petition were to be allowed, the appellant would not be getting any relief for the intervening period.

3. The learned AGP has supported the order of the learned Single Judge.

4. Having heard the learned counsel for the parties, in the facts and circumstances of the case, it appears to the Court that when the petition raising identical contentions has already been admitted by the learned Single Judge, the time gap of nine months between filing of Special Civil Application No.9027 of 2004 and the date of filing of the petition giving rise to this appeal is not going to confer any benefit on the appellant-petitioner and that the appellant himself will be suffering for the said delay even if the petition were to be ultimately allowed. Hence the order dismissing the petition only on the ground of delay of one year and three months in filing the petition deserves to be set aside.

5. The appeal is accordingly allowed. The order dated 15.9.2005 of the learned Single Judge is set aside and Special Civil Application No.15414 of 2005 shall be restored on the file of the learned Single Judge as having been admitted. The said petition shall be heard along with Special Civil Application No.9027 of 2004.

(M.S. SHAH, J.)

(SHARAD D DAVE, J.)

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